

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
APPEAL BRIEF FOR THE APPELLANTS

In re Application of

Appellants: A. TOMA et al.

Application No.: 10/522,581

Filed: September 23, 2005

For: LOCKING/UNLOCKING DEVICE FOR A DOOR OPENER SWIVEL LATCH

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Confirmation No.: 5637

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Examiner: Gary Wayne Estremsky

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Commissioner for Patents
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BRIEF ON APPEAL

INTRODUCTION

This is an appeal from the final Office Action dated August 14, 2007. This paper is filed concurrently with a Request for Extension of Time, to extend the time to file an Appeal Brief subsequent to the Notice of Appeal (filed February 14, 2008) from April 14, 2008 to September 14, 2008. The Commissioner is authorized to charge the required extension fee of \$2,230.00 and any additional fees due in connection with this filing to Deposit Account 50-2036, docket 87305.0042.

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I. REAL PARTY IN INTEREST

The Real Party in Interest in the present application is Assa Abloy Sicherheitstechnik GmbH, a German corporation located in Albstadt, Germany, by virtue of an Assignment recorded in the U.S. Patent and Trademark Office on December 5, 2006 at Reel 018666, Frame 0250.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the appellants, appellants' representatives or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-9 are presently pending in this application. Claim 1 is an independent claim from which claims 2, 3, 4 and 6 depend. Claim 5 depends from dependent claim 4, Claim 7 depends from claim 6 and claim 8 depends from claim 7. Claim 9 is an independent claim. Claims 1-8 are rejected; claim 9 is allowed.

Claim 2 is rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-5 are rejected under 35 U.S.C. §102(b) as being anticipated by Germany Patent Document No. 1772882 (DE '882).

Claims 1-5 are rejected under U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,988,711 to Toma ('711).

Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,988,711 to Toma ('711), in view of U.S. Patent No. 6,874,830 to Bashford ('830).

Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Germany Patent Document No. 1772882 (DE '882), in view of U.S. Patent No. 6,874,830 to Bashford ('830).

The claims on appeal, claims 1-8, are set forth in the attached Appendix 1.

IV. STATUS OF THE AMENDMENTS

Claims 1-9 were amended in a Preliminary Amendment filed with the original application on January 26, 2005. Claims 1-9 were amended on July 8, 2007. In response to this Amendment an Office Action was mailed August 14, 2007 with a final rejection of claims 1-8, as noted above, and allowance of claim 9. Claim 2 was amended on December 14, 2007. An Advisory Action was issued on January 2, 2008 and a Notice of Appeal was filed on February 14, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Brief Summary of the Invention

The locking/unlocking device includes a door opener 15 being in locking position (FIG. 1) or unlocking position (FIG. 2) with a swivel latch 5, a locking lever 4, a safety lever 1 and also an electromagnet 3, that is in active connection with the safety lever 1. The locking lever 4 prevents the swivel latch 5 in the locking position from being transposed into the unlocking position and is configured as one piece and is pivoted such that it can swivel around an axis 12. The safety lever 1 essentially aligned crosswise (or vertical) to the locking lever 4 is pivoted such that it can swivel around a centrally adjusted swiveling axis 10 in its center of gravity and is configured symmetrically and as one piece. (See paragraphs 17-20 and FIGS. 1 and 2).

The safety lever 1 has two arms 6 and 7 that are arranged in one essentially linear direction parallel to each other and with an easy deviation from each other. A compression spring 11 is present on the side of the first lever arm 6 directed toward the swivel latch 5. (See paragraph 20).

In case of an undirected impact on the door opener for instance by means of shocks or impact of force, a dynamic swinging and/or a force is exerted on the housing 14 of the door opener 15 and from there via the locking lever 4 on the safety lever 1, the torsion of the safety lock 1 in anti-clockwise direction from its locking position is prevented due to the position of the safety lever in its center of gravity. (See paragraph 24)

The position of unlocking the locking lever 4 and thus the swivel latch 5 is achieved by an adjustment and/or torsion of the safety lock 1 after application of current to the electromagnet 3. After discontinuance of current to the electromagnet 3 and thus because of the absent action of force from the electromagnet 3 on the second lever arm 7, the first lever arm 6 is wound back as a result of the action of force out of the prestressed compression spring 11 and of the resulting restoring moment into the locking position till the top side 8 of the lever arm 6 activates the switch contact 17 of the microswitch 2, signaling the locked position. (See paragraphs 26, 27 and FIG. 2.)

In an aspect of the present invention, an apparatus is claimed in claim 1 to include a locking/unlocking device for a swivel latch of a door opener comprising a locking lever 4 that locks or unlocks the swivel latch 5 (See paragraph 18) , an electromagnet 3, and a safety lever 1 that is actuated with a prestress (See paragraphs 19, 20, and reference 11)) and thereby holds the locking lever 4 in the locking position (See FIG. 1) and also can be swiveled with the help of the

electromagnet 3 into a position unlocking the locking lever 4 (See paragraph 26 and FIG. 2), wherein the safety lever 1 pivots about its center of gravity (See paragraphs 20, 24 and FIG. 1).

B. Claim References

Independent Claim 1

Locking/unlocking device for a swivel latch of a door opener comprising:

a locking lever 4 that locks or unlocks the swivel latch 5 (See paragraph 18) ;

an electromagnet 3; and

a safety lever 1 that is actuated with a prestress (See paragraphs 19, 20, and reference 11) and thereby holds the locking lever 4 in the locking position (See FIG. 1) and also can be swiveled with the help of the electromagnet 3 into a position unlocking the locking lever 4 (See paragraph 26 and FIG. 2), wherein the safety lever 1 pivots about its center of gravity (See paragraphs 20, 24 and FIG. 1).

Dependent Claim 2

Locking/unlocking device according to claim 1, wherein the safety lever 1 can be swiveled vertical to the swiveling axis 10 of the swivel latch 5. (See paragraph 20).

Dependent Claim 3

Locking/unlocking device according to claim 1, wherein the safety lever 1 is configured symmetrically. (See paragraph 20).

Dependent Claim 4

Locking/unlocking device according to claim 1, wherein the safety lever 1 has two arms 6 and 7 and the electromagnet 3 is in active connection with one lever arm 7 and a compression spring 11 is in active connection with the other lever arm 6 (See paragraphs 20 and 22).

Dependent Claim 5

Locking/unlocking device according to claim 4, wherein the first and the second lever arms 6 and 7 are aligned in essentially one linear direction (See paragraph 20).

Dependent Claim 6

Locking/unlocking device according to claim 1, wherein the safety lever 1 activates a microswitch 2 for monitoring the position of the safety lever 1. (See paragraphs 21 and 27)

Dependent Claim 7

Locking/unlocking device according to claim 6, wherein the lever arm 6 which is actuated with the compression spring 11 activates the microswitch 2. (See paragraphs 21 and 27)

Dependent Claim 8

Locking/unlocking device according to claim 7, wherein the microswitch 2 and the compression spring 11 are arranged on opposite sides of the lever arm (See paragraph 21, 27 and FIGS. 1 and 2).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claim 2 is rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Whether claims 1-5 are rejected under 35 U.S.C. §102(b) as being anticipated by Germany Patent Document No. 1772882 (DE '882).

Whether claims 1-5 are rejected under U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,988,711 to Toma ('711).

Whether claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,988,711 to Toma ('711), in view of U.S. Patent No. 6,874,830 to Bashford ('830).

Whether claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Germany Patent Document No. 1772882 (DE '882), in view of U.S. Patent No. 6,874,830 to Bashford ('830).

VII. ARGUMENT

Each of the rejections, and each of the references, will be treated in detail in the sections below.

Claim 2 is rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Claim 2 is rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

CONCISE STATEMENT OF THE REJECTION OF CLAIM 2 UNDER 35 U.S.C. §112:

Claim 2 is rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner objected to claim 2 in paper no. 20070808 because of the alternative recitation of “can be swiveled wither parallel or vertical to the swiveling axis.”

Claim 2 was amended in a response filed on December 14, 2007 and entered according to the Examiner in paper no. 20071227. The amendment removed the alternative recitations objected to by the Examiner.

In view of the foregoing, withdrawal of the 35 U.S.C. §112 rejection of claim 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is respectfully requested.

B. Claims 1-5 are rejected under 35 U.S.C. §102(b) as being anticipated by Germany Patent Document No. 1772882.

CONCISE STATEMENT OF THE REJECTION OF CLAIMS 1-5 UNDER 35 U.S.C.

§102(b): Claims 1-5 are rejected under 35 U.S.C. §102(b) as being anticipated by Germany Patent Document No. 1772882 (hereinafter, DE '882)). This rejection is respectfully traversed.

No claim is anticipated under 35 U.S.C. §102 (b) unless all of the elements are found in exactly the same situation and united in the same way in a single prior art reference. As mentioned in the MPEP §2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Every element must be literally present, arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (CAFC 1989). The identical invention must be shown in as complete detail as is contained in the patent claim. *Id.*, "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970), and MPEP 2143.03.

It is respectfully submitted that DE '882 does not teach or suggest the invention recited in independent claim 1, including a door opener with a safety lever that holds the locking lever in the locking position and, at the same time, pivots about its center of gravity. To illustrate the concept of this important difference, attached to this appeal brief as Appendix 2 are drawings comparing the overall operation of the safety lever recited in claim 1 with the safety lever of DE '882 (as well as with U.S. patent 5,988,711 by Toma as discussed further below). In these

attached schematic drawings, the center of gravity (CG) and the swiveling axis (SA) of the prior art designs as well as the design recited in claim 1 are depicted. In the arrangement recited in claim 1, the center of gravity CG corresponds to the swiveling axis SA. This is not true in DE '882 as shown in the drawing in Appendix 2 as related to the figure 1 in DE '882.

Respectfully, with regard to DE '882, in the Office Action of paper number 20070808 and advisory action, paper number 20071227, is understood presumably that the Examiner contends that the safety lever of DE '882 can be pivoted about its "geometric centroid" as the center of gravity. However, it is respectfully submitted that this leap is based on hindsight due to Applicants' disclosure and is thus impermissible. Applicants have reviewed DE '882, and first of all does not understand where in this reference the "geometric centroid" is explained in this regard. Further, the Office Actions of Examiner are not understood to illustrate a location of such "geometric centroid." Moreover, claim 1 recites the "center of gravity." By way of example shown in Appendix 2, the safety lever 7 of DE '882 is not believed to be positioned in its center of gravity. In fact, the swiveling axis SA and the center of gravity CG in DE '882 deviate from each other. Accordingly, the conclusion in the Office Action that one skilled in the art would recognize the safety lever of DE '882 is "inherently" pivoted about its center of gravity is believed to be based on hindsight and not any teaching or suggestion from DE '882. This is particularly true since the center of gravity and the swiveling axis in DE '882 deviate from each other. Thus, nothing in DE '882 is understood to suggest the claimed arrangement where these two items are in the same place. Nothing in DE '882 is understood to make any suggestion that positioning the safety lever at its center of gravity would lead to any advantages. The center of gravity and its selection of positioning are not believed to be explained in DE '882 at all.

Accordingly, a significant feature of the invention recited in claim 1 is the provision of a safety lever that is unsusceptible to vibration (due to the positioning of its center of gravity), and that also is used to directly lock the locking lever. This is not accomplished by the safety lever 7 of DE '882 as shown above.

DE '882 fails to disclose a safety lever having its center of gravity corresponding with the swiveling axis and additionally, there is no such teaching made in DE '882.

Moreover, the door lock of DE '82 discloses the lever that is pivotal around a bolt, which is positioned on the side (left side of the Figure) of the lever which is in fact not the center of gravity of the lever labeled with reference 7.

Additionally, DE '882 does not appear to be teaching a safety lever that is actuated with a pre-stress as recited in claim 1. The leaf plate in DE '882 (reference 9 as cited by the Examiner) to the contrary represents a friction break and is supposed to secure the positioning of the safety lever. Additionally as seen in the figure of DE '882, two magnets appear to initiating the lever on both sides rather than one side having a prestress and the other having an electromagnet. Two electromagnets are needed in DE '882 to hold the position of the lever. The present claimed invention, however has *a safety lever that is actuated with a prestress and thereby holds the locking lever in the locking position*. It is clear that the leaf plate 9 of DE '882 is unable to hold the lever 7 in the locking position.

In addition, the Examiner on paper number 20070808 on page 3 relied on a machine translation by Alta-Vista from German to English. The Examiner states that the DE '882 teaches applicant's claim limitations as the Examiner relied on translations made by Alta-Vista machine translator. Respectfully, such translations are not reliable and should not be used as means for rejection. For example, the Japanese patent office warns against reliance on its own machine

translation on their JPO website. Alta-Vista would be even more problematic as it is unlikely to have a proper technical dictionary in its machine translator to properly translate the patent and also such translations may fail to provide a proper context to particular words in question.

In view of the above discussion, it is believed that DE '882 cannot be said to anticipate the invention recited in claim 1. The dependent claims are believed allowable at least for these reasons.

Referring to claim 5, it does not appear that DE '882 has the first and second arm lever arms aligned in essentially one linear direction. In fact looking at the figure of DE '882, the first arm is not in the same linear direction as the second arm, so that a proper contact can be made to both contact points on each one of the magnets 4 and 5. If they were aligned in essentially one linear direction as designed in DE '882, lever 7 would then contact both magnets 4 and 5, making the switching of the lever ineffective. Therefore, DE '882 must have arms as arranged, that are not aligned in essentially one linear direction.

In view of the foregoing, withdrawal of the 35 U.S.C. §102(b) rejection of claims 1-5 as being anticipated by Germany Patent Document No. 1772882 (DE '882) is respectfully requested.

C. Claims 1-5 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,988,711 to Toma.

CONCISE STATEMENT OF THE REJECTION OF CLAIMS 1-5 UNDER 35 U.S.C.

§102(b): Claims 1-5 are rejected under U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,988,711 to Toma (hereinafter, Toma'711). The rejection is respectfully traversed.

It is respectfully submitted that Toma '711 does not teach or suggest the invention recited in independent claim 1, including a door opener with a safety lever that holds the locking lever in the locking position and, at the same time, pivots about its center of gravity. To illustrate the concept of this important difference, attached to this appeal brief as Appendix 2 are drawings comparing the overall operation of the safety lever recited in claim 1 with the safety lever of Toma '711. In these attached schematic drawings, the center of gravity (CG) and the swiveling axis (SA) of the prior art designs as well as the design recited in claim 1 are depicted. In the arrangement recited in claim 1, the center of gravity CG corresponds to the swiveling axis SA. This is not true in Toma'711.

Turning in more detail to Toma '711, it is noted that the safety lever 10 of Toma '711 in fact pivots about its center of gravity is different from the safety lever recited in claim 1. The second safety lever 10 of Toma does not hold the locking lever (catch lever 3) in the locking position, as recited in claim 1. In contrast, the second safety lever 10 of Toma is arranged to block the first safety lever 10 (see, for example, FIG. 1 of Toma). Thus, the second safety lever 10 of Toma is different from the recited safety lever of claim 1.

As mentioned in MPEP 2131, the "Every element must be literally present, arranged as in the claim" and it is clear that the first safety lever 10 disclosed in Toma '711 is not disclosed as arranged in the claim.

Applicants recognize that the claims do not exclude a provision of additional parts. However, it is believed that Toma '711 teaches the concept of a door opener that is fundamentally different in structure and operation to the door opener recited in claim 1. The second safety lever 10 of Toma '711, while it may be pivotable about its center of gravity, does not perform the other recited aspect of locking the locking lever 3. In fact, the second safety lever 10 of Toma '711 does not lock the locking lever 3. In contrast to the invention recited in claim 1, the second safety lever locks the first safety lever, such as is illustrated in FIG. 1 of Toma '711. Thus, the door opener of Toma '711 requires the simultaneous use of two safety levers and the safety lever that is pivotable about its center of gravity is used to lock the first safety lever. Claim 1, in contrast to this arrangement, recites a safety lever that is pivotable about its center of gravity and at the same time directly locks the locking lever in the locking position.

Accordingly, a significant feature of the invention recited in claim 1 is the provision of a safety lever that is unsusceptible to vibration (due to the positioning of its center of gravity), and that also is used to lock the locking lever. This is not accomplished by the second safety lever 10 of Toma'711, which is pivot mounted in its center of gravity, but is constructed as a "low mass lever" (column 2, lines 15 and 16) that arrests the first safety lever 6. The low mass second safety lever 10 described in Toma '711 is believed completely inapplicable to locking the locking lever in the locking position, for example, due to the fact that it would simply break if forces that are exerted on the locking lever (for example in the case of a violent attempt to open the door), are directly transferred from the locking lever onto the second safety lever. For this reason, Toma '711 discloses the additional use of the more stable first safety lever 6. But, in

contrast to the invention recited in claim 1, the first safety lever of Toma '711 is not positioned in its center of gravity, thus necessitating this entire part to be used.

Moreover, the device of Toma requires at least two safety levers (first safety lever 6 and balanced second safety lever 10) that together lock the locking lever. Furthermore, the second safety lever 10 locks the first safety lever 6 (See col. 4, lines 44-47) in a way which is different than the recited in the present claim 1.

Additionally, as explained in the present application, the locking/release of Toma '711 comprises many complex components that are expensive to manufacture and to install. The Applicants discussed the disclosure of Toma '711's priority document DE 19707759 in paragraphs 3-4 of the present application. Further, as mentioned in paragraph 6 of the present application, the conventional art including the German priority document (DE 19707759) of Toma '711 fail to teach the safety lever pivoted at its center of gravity and no further lever is required for guaranteeing the impact safety of the door opener. Meanwhile, as seen in Toma '711, at least two levers are needed.

The Examiner argues that the second safety lever remains in its position arresting the first lever, so that the catch lever is not unlocked and the swing catch is not released anticipates holds the locking lever in the locking position as mentioned in the advisory action of paper number 20071227. However, this reasoning by the Examiner does not take into account the present claim as a whole and the reference as a whole and so must take into account that the two lever structure of Toma '711 that do not disclose the claimed invention.

In view of the above discussion, it is believed that Toma '711 cannot be said to anticipate the invention recited in claim 1.

In view of the foregoing, withdrawal of the 35 U.S.C. §102(b) rejection to Claims 1-5 as being anticipated by U.S. Patent No. 5,988,711 to Toma is respectfully requested.

D. Claims 6-8 are rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,988,711 to Toma, in view of U.S. Patent No. 6,874,830 to Bashford (hereinafter Bashford '830).

CONCISE STATEMENT OF THE REJECTION OF CLAIMS 6-8 UNDER 35 U.S.C.

§103(a): Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,988,711 to Toma ('711), in view of U.S. Patent No. 6,874,830 to Bashford ('830). The rejection is respectfully traversed.

According to MPEP 706.02(j), the following establishes a *prima facie* case of obviousness under 35 U.S.C. §103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In *re* Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The dependent claims 6-8 are believed allowable at least for the reasons set forth under part B for rejection under Toma '711. Further, with respect to claims 6-8, it is respectfully submitted that Bashford '830 does not remedy the deficiencies of the primary references, and thus the dependent claims are allowable also at least for the reasons given above.

Moreover, the combination of references fail to teach or suggest the combination of locking function and the actuation of the microswitch in a single lever as claimed. On the contrary, Bashford '830 discloses a ledge monitor arm 82 that includes an extension 83 having a door latch bolt plate 84 at its distal end (see col. 6, lines 8-10, and a microswitch via a lever that is moved by the door latch bolt that is present in the strike. However, claims 6-8 recite additional features such as the safety lever is actuated with a pre-stress, holds the locking lever in the locking position, can be swiveled with the help of an electromagnet into a position unlocking the locking lever, pivots about its center of gravity, and activates a microswitch. Thus, claims 6-8 relate to a safety lever that comprises a locking function (locking of the locking lever) together with an activation/monitoring function (activation of the microswitch). This combination enables a reduction of necessary parts in the device. Accordingly, it is respectfully submitted that neither Toma '711 nor Bashford '830, whether taken singly or in combination, renders the invention of claims 6-8 obvious.

Additionally as seen in claim 7, the combination of Toma fail to teach or suggest the lever arm actuated with the compression spring activating the microswitch of Bashford '830. Simply picking and choosing the microswitch of Bashford '830 is not enough, but must be taught

or suggested to be related to the compression spring and the lever arm as claimed and Bashford '830 fails to make such a teaching.

Moreover, with regard to claim 8, there is no teaching in the combination that the microswitch and compression spring is on opposite sides and the Examiner in the rejections fails to provide a reasoning as how the microswitch of Bashford '830 would be on the opposite side, especially since Toma and Bashford '830 are different apparatus than the present claimed invention.

In view of the foregoing, withdrawal of the 35 U.S.C. §103(a) rejection of claims 6-8 as being unpatentable over U.S. Patent No. 5,988,711 to Toma, in view of U.S. Patent No. 6,874,830 to Bashford is respectfully requested.

E. Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Germany Patent Document No. 1772882, in view of U.S. Patent No. 6,874,830 to Bashford.

CONCISE STATEMENT OF THE REJECTION OF CLAIMS 6-8 UNDER 35 U.S.C.

§103(a): Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Germany Patent Document No. 1772882 (DE '882), in view of U.S. Patent No. 6,874,830 to Bashford (Bashford '830). The rejection is respectfully traversed.

The dependent claims 6-8 are believed allowable at least for the reasons set forth under part A for rejection under DE '882. Further, with respect to claims 6-8, it is respectfully submitted that Bashford '830 does not remedy the deficiencies of the primary references, and thus the dependent claims are allowable also at least for the reasons given above.

Moreover, the combination of references fail to teach or suggest the combination of locking function and the actuation of the microswitch in a single lever as claimed. On the contrary, Bashford discloses a ledge monitor arm 82 that includes an extension 83 having a door latch bolt plate 84 at its distal end (see col. 6, lines 8-10, and a microswitch via a lever that is moved by the door latch bolt that is present in the strike. However, claims 6-8 recite additional features such as the safety lever is actuated with a pre-stress, holds the locking lever in the locking position, can be swiveled with the help of an electromagnet into a position unlocking the locking lever, pivots about its center of gravity, and activates a microswitch. Thus, claims 6-8 relate to a safety lever that comprises a locking function (locking of the locking lever) together with an activation/monitoring function (activation of the microswitch). This combination enables a reduction of necessary parts in the device. Accordingly, it is respectfully submitted that neither DE '882 nor Bashford, whether taken singly or in combination, renders the invention of claims 6-8 obvious.

With regard to claim 7, the combination of DE '882 and Bashford '830 fail to teach or suggest the lever arm actuated with the compression spring activates the microswitch. As seen in the figure of DE '882, the leaf plate 9 is unable to activate the microswitch of Bashford '830. It is not the leaf plate 9 that actuates with the lever 7, but another magnet 4. Further, the leaf plate 9 of DE '882 is not considered a compression spring as claimed.

With regard to claim 8, there is no teaching or suggestion in Bashford '830 or DE '882 of having the microswitch on the opposite side of the compression spring, especially since the spring of DE '882 acts in a very different manner.

In view of the foregoing, withdrawal of the 35 U.S.C. §103(a) rejection of claims 6-8 over Germany Patent Document No. 1772882, in view of U.S. Patent No. 6,874,830 to Bashford is respectfully requested.

CONCLUSION

Appellants have not endeavored above to identify each and every deficiency of each and ever reference with respect to each and every claimed feature, and Appellants are not attacking the references individually. Rather, it is Appellants' argument that in some instances the actual features are not suggested by the excerpts from the references being relied on in the Office Action, and in any event the only motivation to arrive at the claimed invention is found in Appellants' own disclosure.

Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to our Docket No. 87305.0042.

Respectfully submitted,

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Appendix 1 - Claims

1. ((Rejected)) Locking/unlocking device for a swivel latch of a door opener comprising:
a locking lever that locks or unlocks the swivel latch;
an electromagnet; and
a safety lever that is actuated with a prestress and thereby holds the locking lever in the locking position and also can be swiveled with the help of the electromagnet into a position unlocking the locking lever, wherein the safety lever pivots about its center of gravity.
2. ((Rejected)) Locking/unlocking device according to claim 1, wherein the safety lever can be swiveled vertical to the swiveling axis of the swivel latch.
3. ((Rejected)) Locking/unlocking device according to claim 1, wherein the safety lever is configured symmetrically.
4. ((Rejected)) Locking/unlocking device according to claim 1, wherein the safety lever has two arms and the electromagnet is in active connection with one lever arm and a compression spring is in active connection with the other lever arm.
5. ((Rejected)) Locking/unlocking device according to claim 4, wherein the first and the second lever arms are aligned in essentially one linear direction.
6. ((Rejected)) Locking/unlocking device according to claim 1, wherein the safety lever activates a microswitch for monitoring the position of the safety lever.

7. (Rejected) Locking/unlocking device according to claim 6, wherein the lever arm which is actuated with the compression spring activates the microswitch .

8. (Rejected) Locking/unlocking device according to claim 7, wherein the microswitch and the compression spring are arranged on opposite sides of the lever arm.

9. (Allowed) Locking/unlocking device for a swivel latch of a door opener, comprising:
a locking lever that locks or unlocks the swivel latch;
an electromagnet; and
a safety lever that is actuated with a pre-stress and thereby holds the locking lever in the locking position and also can be swiveled with the help of the electromagnet into a position unlocking the locking lever, wherein the safety lever pivots about its center of gravity;
and
a permanent magnet which is in active connection with a first lever arm of the safety lever such that it has the function of a holding magnet, so that the safety lever is retained in a locking position when no current is applied to the electromagnet.

APPENDIX 2


EVIDENCE APPENDIX

None. Appellant submits that no evidence is being relied upon in the appeal.

RELATED PROCEEDINGS APPENDIX

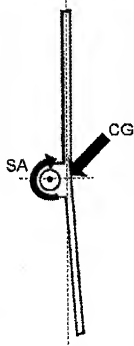
None. Appellant submits that there are no decisions rendered by a court or the Board in any proceeding identified pursuant to 37 CFR 41.37 (c)(1)(ii).

APPENDIX 2

CG = CENTER OF GRAVITY ()

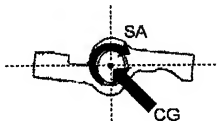
SA = SWIVELING AXIS AND ONE EXEMPLARY SWIVELING DIRECTION ()

SAFETY LEVER 7 of
DE 1 772 882 U1



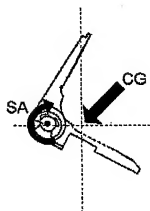
SA \neq CG

Claim 1



SA = CG

FIRST SAFETY LEVER 6 of
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SA \neq CG